

ORDINANCE NO. 28745

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
CHAPTER 17.38 OF TITLE 17 OF THE SAN JOSE
MUNICIPAL CODE TO REQUIRE MAINTENANCE OF
VACANT BUILDINGS AND REGISTRATION OF
NEGLECTED VACANT OR ABANDONED BUILDINGS**

WHEREAS, this Ordinance was found to be categorically exempt from environmental review pursuant to the provisions of Section 15308 of the California Environmental Quality Act of 1970, as amended; and

WHEREAS, the presence of vacant, neglected, or abandoned buildings can lead to neighborhood decline, create an attractive public nuisance, lower property values, and discourage economic development in the area; and

WHEREAS, the responsibilities of maintaining vacant, neglected, or abandoned buildings are with the owners, lenders, trustees, or others with property interests in the vacant, neglected, or abandoned buildings; and

WHEREAS, certain owners, lenders, trustees, or others with property interests in the vacant, neglected, or abandoned buildings have failed to adequately maintain and secure these buildings in the City of San José ("City"); and

WHEREAS, City has an interest to protect its neighborhoods from decline and devaluation; and

WHEREAS, City also has an interest to preserve vacant and abandoned historic buildings and structures to reflect its historical, architectural, cultural, and aesthetic value and tradition, protect and enhance the City's cultural and aesthetic heritage, and promote and encourage continued private ownership and utilization of such structures; and

WHEREAS, on August 6, 2008 and April 7, 2010 the Historic Landmarks Commission met, reviewed, and discussed the proposed Ordinance and unanimously recommended the City Council adopt the proposed Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Chapter 17.38 of Title 17 of the San José Municipal Code is amended to read as follows:

**CHAPTER 17.38
MAINTENANCE AND REHABILITATION OF NEGLECTED VACANT OR
ABANDONED BUILDINGS**

Part 1

General Provisions

17.38.010 Purpose

Neglected vacant or abandoned buildings are a major source of blight in the City of San José and pose serious threats to the public's health, safety and welfare. They attract children, vagrants, gang members, and criminal activities. They are also vulnerable to fire set by transients or others using the property illegally. The presence of neglected vacant or abandoned buildings can lead to neighborhood decline, create an attractive public nuisance, lower property values, and discourage economic development in the area.

It is the responsibility of property owners, lenders, trustees, or others with possessory, equitable, or legal interests in the neglected vacant or abandoned buildings, including without limitation, historic buildings or structures, to maintain, secure, and prevent these

buildings from becoming a burden to the neighborhood and community or a threat to the public health, safety and welfare. The purpose of this Chapter is to provide standards for maintaining vacant and abandoned buildings and to establish a monitoring program for those that are determined to be neglected.

17.38.020 Definitions

The definitions set forth in this Section shall govern the application and interpretation of this Chapter.

- A. "Abandoned" means a Property, including a residence, building, structure, or any structural improvement on real property, that is Vacant and is (i) under a current Notice of Default and/or Notice of Trustee's Sale; (ii) subject to Foreclosure sale where title was retained by the Beneficiary of a Deed of Trust; or (iii) transferred under a Deed In-Lieu of Foreclosure/Sale.
- B. "Beneficiary" means a lender under a note secured by a Deed of Trust.
- C. "Deed In-Lieu of Foreclosure/Sale" means a recorded document that transfers ownership of real property from the Trustor to the holder of a Deed of Trust upon consent of the Beneficiary of the Deed of Trust.
- D. "Deed of Trust" means an instrument by which title to real property is transferred to a third party Trustee as security for a real estate loan. This definition applies to any and all subsequent Deeds of Trusts.
- E. "Default" means the failure to comply or fulfill any contractual obligation under the Deed of Trust.

- F. "Director" means the Director of Planning, Building and Code Enforcement, or designee, or such other director designated by the City Manager to administer this Chapter.
- G. "Foreclosure" means the process by which real property, placed as security for a real estate loan, is sold at an auction to satisfy the debt when the Trustor (borrower) Defaults on the real estate loan.
- H. "Historic" means any building or structure that is listed on (i) the National Register of Historic Places; (ii) the California Register of Historic Resources; or (iii) the City of San José Register of Historic Landmarks.
- I. "Neglected Vacant" building or structure means any Vacant building or structure that is not maintained in accordance with this Chapter.
- J. "Notice of Default" means a recorded notice that a Default has occurred under a Deed of Trust and the Beneficiary intends to proceed with a Trustee's sale of the real property or asserts any of its rights under the Deed of Trust.
- K. "Owner" means any person, partnership, association, company, corporation, entity, financial institutions, or fiduciary having a legal, possessory, or equitable title or any interest in a Property.
- L. "Property" means any improved real property, or portion thereof, situated in the City and includes any residence, building, structure or any other improvement located on the real property.
- M. "Trustee" means any person, partnership, association, company, corporation, or any other person or entity holding a Deed of Trust on a Property.

- N. "Trustor" means a borrower under a Deed of Trust who deeds Property to a Trustee as security for the payment of a debt.
- O. "Vacant" means any building or structure which has remained unoccupied for a period of more than thirty (30) calendar days or which has been occupied by any unauthorized person for any length of time. A building or structure is not deemed to be Vacant for purposes of this Chapter if any of the following circumstances exist:
1. Construction, alteration, improvements, rehabilitation, or repair is in progress pursuant to a valid, unexpired building permit.

17.38.030 Compliance Required

- A. Every Owner of a Property shall maintain the Property in accordance with this Chapter.
- B. Every Owner of a Property is liable for violation of this Chapter regardless of any contract or agreement the Owner has with any third party.
- C. Except as otherwise provided herein, the Director shall have the authority to enforce the provisions of this Chapter.

17.38.040 Public Nuisance

Any Property in violation of this Chapter shall constitute a public nuisance.

Part 2

Maintenance Standards

17.38.200 Vacant or Abandoned Building

- A. It shall be unlawful for any building or structure, whether residential, commercial, industrial, or Historic, to be Vacant for more than one hundred and eighty (180) calendar days unless one (1) of the following conditions exists:
1. The building or structure is subject to an active building permit for construction, alteration, modification, rehabilitation, or repair and the Owner is progressing diligently to complete the construction, alteration, modification, rehabilitation, or repair within the time frame set forth in the building permit.
 2. The building or structure complies with all codes, ordinances, or laws adopted by the City, does not otherwise constitute a public nuisance, is ready for use or occupancy, and is actively being offered for sale, lease, or rent.
 3. The building or structure, including the Property on which it is located, does not otherwise constitute a public nuisance and is unlikely to become a public nuisance because the Property is actively maintained and monitored. Actively maintained and monitored shall mean the condition of the Property complies with the minimum standards set forth in Part 2 of this Chapter and any other applicable provisions of this Municipal Code.
- B. The Owner of any Vacant or Abandoned building or structure, whether boarded by voluntary action of the Owner or as a result of enforcement activity by City, shall rehabilitate the boarded building or structure for occupancy, in accordance

with all applicable code and regulations, within one hundred and eighty (180) calendar days after the building is boarded, unless the building or structure meets one of the conditions set forth in 17.38.200(A). Rehabilitation shall mean taking corrective action to meet the minimum standards set forth in Part 2 of this Chapter and complying with any other applicable provisions of the Municipal Code so the Property is not a public nuisance.

17.38.210 Structural And Building Standards

- A. All Vacant or Abandoned Property shall be maintained in a structurally sound condition and meet the following minimum building standards:
1. Complies with all applicable building codes adopted by the City of San José.
 2. All electrical, natural gas, sanitary and plumbing facilities shall be maintained in a condition which does not create a hazard to public health or safety.
 3. All fences, walls, arbors, or other similar structures, whether made of masonry, wood, metal, vinyl or other materials, shall be maintained in a structurally sound condition in accordance with Chapters 17.20 and 17.72 of this Municipal Code.

17.38.220 Fire Safety

- A. All Vacant or Abandoned Property shall be maintained in a manner which does not create an unreasonable risk of fire and which meets the following minimum fire safety standards:

1. Complies with all applicable fire codes adopted by the City of San José.
2. Is maintained in a manner where the Property is free of all vegetation, weeds, dry brush, garbage, trash, debris, appliances, building materials, rubbish, accumulation of newspapers, circulars, flyers, notices, except those required by law, which may constitute a safety or fire hazard.
3. Is maintained in a manner where the Property is free of any storage of flammable liquids or other materials which would constitute a safety or fire hazard.
4. Is maintained in a manner where the heating facilities or heating equipment are either removed pursuant to a valid permit or maintained in accordance with applicable codes and ordinances. If heating equipment is removed, any fuel supply shall be removed or terminated in accordance with applicable permits, codes and ordinances.
5. Is maintained in a manner where all existing fire protection systems are kept in operating condition in accordance with applicable codes and ordinances, unless written authorization for removal of those systems has been granted by the City of San José Fire Marshal.
6. Is maintained in a manner where no fire hydrants, including private hydrants, that provide water flow to a Property, are removed, tampered with, or taken out of service, unless authorized in writing by the City of San José Fire Marshal.

17.38.230 Security Standards

- A. All Vacant or Abandoned Property shall be maintained in a manner which secures it from any unauthorized entry and meets the following minimum security standards:
1. All windows, doors, gates, fences or any other opening of such size that may allow access of persons, animals, or other elements, to the interior of the Property, building or structure shall be secured, locked, closed, or maintained in such a manner so as to prevent unauthorized entry. Windows, sliding doors, or similar openings shall provide either intact glazing or resistance to entry equivalent to or greater than that of a solid sheet of one-quarter-inch plywood, painted to protect it from the elements, cut to fit the opening, and securely nailed using 6D galvanized nails spaced not more than six (6) inches on the center.
 2. Doors and service openings with thresholds located ten (10) feet or less above grade, stairway, landing, ramp, porch, roof or similarly accessible area shall provide resistance to entry equivalent to or greater than that of a closed single panel or hollow core door one and three-eighths inches thick equipped with a half-inch throw deadbolt.
 3. Exterior doors, other than the operable door described in 17.38.230(A)(4), may be closed from the interior of the building or structure by toe nailing them to the door frame using 10D or 16D galvanized nails.
 4. There shall be at least one (1) operable door into each building or structure to allow access to all portions of the building or structure. If an existing door is operable, it may be used and secured with a suitable lock such as a hasp and padlock or a one-half inch deadbolt or deadlatch.

5. All locks shall be kept locked. When a door cannot be made operable and is not visible from the public right-of-way or neighboring Property, a door shall be constructed of three-quarter-inch CDX plywood and shall be equipped with a lock as described above.
6. There shall be a sign no less than 18" x 24" posted on the front of the exterior building or structure so it is legible from the public-right-of-way with the following information: (i) name and twenty-four (24) hour contact telephone number and address of the Owner, responsible party, or property management company; and (ii) the statement that "THIS PROPERTY MANAGED BY" with the appropriate name inserted and "TO REPORT PROBLEMS OR CONCERNS CALL" with the twenty-four (24) hour telephone number listed. The sign shall be constructed and printed with weather resistant materials.

17.38.240 Debris Removal

All Vacant or Abandoned Property including all adjoining yard areas shall be maintained free of debris, combustible materials, litter, garbage, or any other item that gives the appearance the Property is Vacant or Abandoned in accordance with Chapters 9.10, 17.72, and other applicable provisions of this Municipal Code.

17.38.250 Appearance

- A. All Vacant or Abandoned Property must be maintained in a manner which minimizes the appearance of vacancy and meets the following minimum appearance standards:

1. The Property shall be maintained free of graffiti, tagging, or similar markings by removal or painting over within twenty-four (24) hours with similar exterior grade paint to match the color of the exterior of the building or structure in accordance with Chapters 9.57 and 9.58 and other applicable provisions of this Municipal Code.
2. Any construction, alteration, improvements, or rehabilitation shall be completed during the term of a valid building permit or building permit extension issued by the Director, Building Official, or their designee.
3. All exterior surfaces visible from the public right-of-way or neighboring Properties shall be maintained to prevent entry including replacement or repair to any broken windows, doors or siding materials and be applied with sufficient paint, siding, stucco or other finish to weatherproof the vacant or abandoned building or structure and to create a sufficient appearance of repair to deter unauthorized occupation.
4. All exterior surfaces not visible from the public right-of-way or neighboring Properties, including any boarded windows or doors shall be applied with sufficient paint, siding, stucco or other finish to weatherproof the vacant or abandoned building or structure and to create a sufficient appearance of repair to deter unauthorized occupation.
5. All landscaping, including grass, turf, trees, hedges, shrubs, flowers, and other similar materials, shall be kept in accordance with Chapter 17.72 of this Municipal Code and in such condition as not to create the appearance of a Vacant or Abandoned building or structure.
6. All pools, spas, or other areas of standing water shall be kept in working order so that the water remains clear and free of pollutants or debris,

unless the pools, spas, or other areas are drained and kept dry. All Properties with pools, spas, or other areas of standing water must meet the minimum fencing requirements outlined in Chapter 17.28 of this Municipal Code and State law.

17.38.260 Vacant or Abandoned Historic Building

- A. This Chapter shall apply to any Vacant or Abandoned Historic building or structure located in the City of San José.
- B. In addition to any other requirement of this Chapter, a Vacant or Abandoned Historic building or structure shall also be safeguarded and maintained in accordance with this Section.
 - 1. All Vacant or Abandoned Historic buildings or structures shall have an operating security alarm system at all times as approved by the Director, such as, movement detectors, automatic signal device, intrusion alert, closed circuit television monitoring, or similar type of security systems.
 - 2. All Vacant or Abandoned Historic buildings or structures shall be maintained in accordance with Section 311 of the California Fire Code. A Vacant or Abandoned Historic building that is deemed unsafe by the City of San José Fire Marshal may become subject to an abatement action that may require corrective action including, but not limited to, installation of a fire alarm system, sprinkler system, smoke detector, or a combination thereof.

17.38.270 Additional Authority

In addition to any other rights, remedies, or enforcement provided in this Chapter or Municipal Code, the Director shall have the authority to require the Owner of any Property in violation of this Chapter, to implement additional maintenance, security, fire or other corrective or preventive measures as may be reasonably required to combat the decline of the Property, such as securing the Property, installing additional lighting, or increase on-site inspections.

Part 3 Enforcement

17.38.300 Neglected Vacant or Abandoned Building Monitoring Program

- A. If the Director determines that a Property is subject to this Chapter, Director shall send a notice and require the Owner of any Vacant or Abandoned building or structure to register the Property into the Neglected Vacant or Abandoned Building Monitoring Program within ten (10) calendar days of the date of the notice to register.
- B. The Owner of a Neglected Vacant or Abandoned building or structure may appeal the Director's decision to place the building or structure into the Neglected Vacant or Abandoned Building Monitoring Program by filing a notice of appeal with the Director within ten (10) days of the date of the notice.
- C. If the Director finds that a Vacant or Abandoned building or structure which has been placed in the monitoring program has not been in further violation of the provisions of this Chapter for more than six (6) consecutive months, the Director shall have the discretion to remove the building or structure from the monitoring program.

17.38.310 Registration

- A. The Owner of a Vacant or Abandoned building or structure which is required to register in the Neglected Vacant or Abandoned Building Monitoring Program pursuant to this Chapter shall be registered in accordance with the requirements of this Section.
- B. The registration information shall include:
 - 1. The address of the Vacant or Abandoned building or structure.
 - 2. The Assessor Parcel Number of the real property where the Vacant or Abandoned building or structure is located.
 - 3. The name, address, and telephone number of the Owner. If a Notice of Default has been issued, the name, address, and phone number of the Beneficiary or Trustee on the Deed of Trust shall be included. In the case of a corporation or out of area Beneficiary or Trustee, as defined below, the local property management company or agent responsible for the security, maintenance, and monitoring of the Property shall be included.
 - 4. The date the building or structure became Vacant.
- C. Any change in the information provided pursuant to this Section, including but not limited to a change in ownership, shall be filed with the Director within fifteen (15) days of the change.

17.38.320 Responsible Agent

- A. The Owner of any Vacant or Abandoned building or structure which is subject to the registration requirements of this Chapter shall designate a responsible agent for the building or structure. Any Owner who lives within sixty (60) miles of the Vacant or Abandoned building or structure may designate himself or herself as the responsible agent.
- B. The Owner of any Vacant or Abandoned building or structure who lives more than sixty (60) miles from the building or structure shall name a responsible agent who lives within or whose place of business is within the City of San José. In the event an Owner is a corporation, association, or other type of entity, the Owner shall either have its principal place of business within the City of San José or may designate a responsible agent who has its principal place of business within the City of San José or lives within sixty (60) miles from the building or structure.
- C. The designation of responsible agent shall constitute an authorization by the Owner for the responsible agent to act on behalf of the Owner with regard to all requirements under this Chapter and may accept all notices, including all notices pursuant to this Chapter, all notices of proposed abatements or summary abatements pursuant to Title 17 of this Municipal Code, and all compliance orders and administrative orders pursuant to Chapter 1.14 of Title 1 of this Municipal Code, on behalf of the Owner.
- D. The Owner's designation of a responsible agent shall not relieve the Owner of any obligation to comply with the provisions of this Chapter.

17.38.330 Inspections

- A. The Owner or responsible agent of a Vacant or Abandoned building or structure which is required to be registered in the Neglected Vacant or Abandoned Building Monitoring Program shall inspect or cause the inspection of such Vacant or Abandoned building or structure not less than one time in every two-week period.
- B. Such Owner or responsible agent shall keep or cause to be kept a written log of all inspections. The log shall contain the following information:
 - 1. The date and time of the inspection;
 - 2. The name and signature of the person performing the inspection;
 - 3. A notation of any problems or violation of this Chapter or Municipal Code identified;
 - 4. A detailed description of any corrective action performed to address any violation of this Chapter or Municipal Code.
- C. A copy of the log shall be provided to the City upon request of the Director.

17.38.340 Fees

- A. The Owner of a Vacant or Abandoned building or structure subject to registration shall pay the Neglected Vacant or Abandoned Building Monitoring Program registration fee as set forth in the schedule of fees adopted by resolution of the City Council. Payment of the registration fee shall be made to the City at the same time the Owner submits the registration form to the City.
- B. The fee shall be calculated on a quarterly basis and the entire fee shall be due and owing at the time of registration. Registration fees will not be prorated.

17.38.350 Appeals

- A. The Appeals Hearing Board shall have jurisdiction to hear appeals of the following:
 - 1. The placement of the Vacant or Abandoned building or structure into the Neglected Vacant or Abandoned Building Monitoring Program; or
 - 2. The requirement to pay fees under this Chapter.
- B. A determination which is appealable under 17.38.350(A) may be appealed by the Owner of the Property to the San José Appeals Hearing Board by filing written notice of appeal with the Director within ten (10) days of the action for which the appeal is taken. When a notice of appeal has been received by the Director for filing:
 - 1. The Director shall, within ten (10) days after receipt of the notice of appeal, file it with the Secretary of the Board.

2. The Secretary of the Board shall set the date for hearing and determination by the Board which date shall not be less than ten (10) days nor more than sixty (60) days after the date on which the copy of the notice of appeal was filed with the Secretary of the Board.
- C. Within a reasonable time after the Board has concluded its hearing, it shall by resolution set forth its findings and decision. The decision of the Board shall be final. The Secretary of the Board shall notify the Director of the decision and shall mail a copy of the decision to the appellant at the address shown for such purpose on the notice of appeal.

17.38.360 Administrative Penalties

Any Owner of a Vacant or Abandoned Property in violation of this Chapter is subject to the Administrative Remedies Ordinance set forth in Chapter 1.14 of this Code.

17.38.370 Remedies

The provisions of this Chapter are nonexclusive and supplementary to any existing rights and remedies, and the provisions of this Chapter may be enforced by any remedies provided for in this Code or otherwise available at law. Violations of this Chapter may be prosecuted criminally, civilly, or administratively either undertaken separately or in conjunction with other remedies, at the sole discretion of the City. Nothing in this Chapter shall be deemed to prevent the City from commencing any administrative or legal proceeding to enforce this Chapter, Code, or any law.

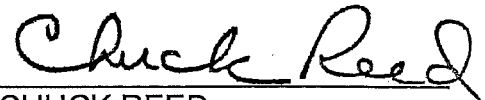
PASSED FOR PUBLICATION of title this 18th day of May, 2010, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA,
KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.



CHUCK REED
Mayor

ATTEST:



LEE PRICE, MMC
City Clerk